IN THE

Supreme Court of the United States

OCTOBER TERM 1973

No. 73-434

WILLIAM G. MILLIKEN, ET AL.,
Petitioners,

vs.

RONALD G. BRADLEY, ET AL.,
Respondents.

No. 73-435

ALLEN PARK PUBLIC SCHOOLS, ET AL.,
Petitioners,

vs.

RONALD G. BRADLEY, ET AL.,
Respondents.

No. 73-436

THE GROSSE POINTE PUBLIC SCHOOL SYSTEM, ET AL.,
Petitioners,

vs.

RONALD G. BRADLEY, ET AL.,
Respondents.

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE BY METROPOLITAN SCHOOL DISTRICTS OF LAWRENCE, WARREN AND WAYNE TOWNSHIPS, MARION COUNTY, INDIANA

The Metropolitan School District of Lawrence Township, The Metropolitan School District of Warren Township, and The Metropolitan School District of Wayne Township, all located in Marion County, Indiana (referred to herein as "Indiana School Districts") respectfully move the Court for leave to file the attached "Brief Amicus Curiae" in this case under Rule 42 of this Court.

Indiana School Districts requested and obtained consents to file a brief amicus curiae from the attorneys for all the Petitioners in this case, and from the Respondents, Michigan Education Association and Professional Personnel of Van Dyke. Indiana School Districts requested consents from the other Respondents but received no reply.

The interest of the Indiana School Districts arises from the following facts: They are parties defendant to consolidated appeals now pending in the United States Court of Appeals for the Seventh Circuit, *United States of America and Buckley* v. *Board of School Commissioners of the City of Indianapolis* (Cause Nos. 73-1968 through 73-1984). These appeals are taken from an order of the United States District Court for the Southern District of Indiana, ordering relief against school districts (including Indiana School Districts) which are contiguous and non-contiguous to the Indianapolis school district to remedy *de jure* segregation previously found to exist solely within the Indianapolis school district.

The principal issue now on appeal in the expanded Indianapolis case is substantially similar to a principal issue raised in Detroit case now before this Court: whether desegregation of a central city in a metropolitan area may be accomplished by consolidation, or other forms of metropolitan remedy, involving surrounding contiguous and non-contiguous independent school corporations, not themselves parties to illegal desegregation. A summary of the position taken by the District Court in the Indianapolis case is set out in an excerpt from its December 6, 1973 entry printed in the Appendix to the brief bound with

this motion at pages A1 through A10. Accordingly, a decision in the cases now before this Court may in effect determine the Indianapolis case now on appeal in the Circuit Court of Appeals.

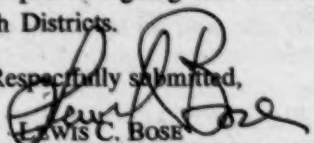
The Petitioners in the cases before this Court in their Petitions for Certiorari have properly presented for review the propriety of an interdistrict remedy. They have framed the issue in terms of their status as independent municipal corporate bodies separate and identifiable from Detroit, of the fact that they did not participate in any discriminatory act towards the Negro students of Detroit, and of the absence of a finding of causal connection between the alleged discriminatory acts of the Detroit Board or the State and the racial makeup of the non-Detroit defendant school districts.

Indiana School Districts are of the opinion that resolution of the case requires analysis of the demographic trends responsible for the minority racial concentration in Detroit as in all major metropolitan centers, and of the change in the scope and nature of the Fourteenth Amendment obligation owed by Michigan and virtually every other state to Negro students living in metropolitan areas, upon affirmance of the decision of the Sixth Circuit Court of Appeals. The proposed remedy would place a burden on the Federal Courts to weigh the necessities of desegregation or integration against very complex and educationally sensitive problems incident to how school districts in metropolitan areas are to be organized, reorganized and operated. Indiana School Districts desire to present a brief amicus curiae analyzing these problems and analyzing central city desegregation from this standpoint.

Each of the Indiana School Districts is an independent municipal corporation with the right to sue and be sued and is a political subdivision established by the State of Indiana for the

purpose of administering schools within their respective boundaries. The person signing this motion is the authorized attorney for such Districts.

Respectfully submitted,



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Federal Cases

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Bradley v. Milliken (6th Cir., Cause Nos. 72-1809-72-1814), Slip Opinion, June 12, 1973 ..... 13, 23

Brown v. Board of Education, 347 U. S. 483 (1954) 8

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Calhoun v. Cook, 332 F. Supp. 804 (N. D. Ga. 1971), *aff'd. and rev'd. in part;* 451 F. 2d 583 (5th Cir. 1972) 23

Goss v. Bd. of Ed. of Knoxville, 482 F. 2d 1044, (6th Cir. 1973) 23

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Keyes v. School District No. 1, Denver, Colo., ... U. S. ....., 41 U. S. L. W. 5002 (1973) 8, 13

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San Antonio Independent Schl. Dist. v. Rodriguez, ... U. S. ....., 41 U. S. L. W. 4407 (1973) 15, 24

Spencer v. Kugler, 326 F. Supp. 1235 (D. N. J. 1971), *aff'd.* 404 U. S. 1027 (1972) 24

Swann v. Charlotte-Mecklenburg Board of Education, 402 U. S. 1 (1971) 8, 24

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State Cases

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Southern Ry. Co. v. Harpe, 223 Ind. 124, 132, 58 N. E. 2d 346 (1944) 13

Woerner v. City of Indpls., 242 Ind. 253, 177 N. E. 2d 34 (1961) 13

Government Publications

Bureau of the Census, General Demographic Trends for Metropolitan Areas, 1960 to 1970, Rpt. PHC(2)-1, page 3 (1971) 8, 9, 11, 12

Bureau of the Census, Social and Economic Characteristics of the Population in Metropolitan and Non-Metropolitan Areas: 1970 and 1960, Rpt. P23 No. 37 (1971) 7, 8, 9

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Bureau of the Census, Birth Expectations of American Wives June 1973, Rpt. P-20, No. 254, Table 1..... 9

H. E. W., Dept. of Educational Statistics 1971 17

H. E. W. Education Directory 1972-73 19

Statistical Abstract of the United States—1972 .....A-11

Articles

American Association of School Administrators, School District Reorganization (1958), pp. 70-71 15

Bundy Report—See article below: Mayor's Advisory Panel on Decentralization of the New York Schools, Reconnection for Learning—A Community School System For New York City, McGeorge Bundy, Chairman (Frederick A. Praeger, Publishers, 1969) 18, 19, 20

Drucker, The Age of Discontinuity (Harper & Row 1968) 10

Hickey, Optimum School District Size (Eric Clearinghouse on Educational Administration, University of Oregon 1969), p. 25 18

Levin, Financing Schools in a Metropolitan Context in Metropolitan School Organization: Basic Problems and Patterns (McCutcheon Publishing Corporation 1973), p. 39 .....19, 22

Mayor's Advisory Panel on Decentralization of the New York Schools, Reconnection for Learning—A Community School System For New York City, McGeorge Bundy, Chairman (Frederick A. Praeger, Publishers, 1969) 18, 19, 20

Polley, "Decentralization Within Urban School Systems," in Education in Urban Society, (Dodd, Mead, and Co., 1962) pp. 122-123, cited in the Bundy Report, p. 8... 20

Rebell, New York's Decentralization Law: Two and a Half Years Later, 2 Journal of Law and Education (1973) (herein Rebell) 21

Taeuber, Negroes in Cities (Aldine Publishing Company 1965) (herein Taeuber) 10, 11

Wall Street Journal, September 7, 1972, p. 1, col. 1 "Who's in Charge: Public-Employe Unions Press for Policy Role; States and Cities Balk" 15

Zimvet, Decentralization and School Effectiveness—A Case Study of the 1969 Decentralization Law in New York City (Teachers College Press 1973) 21

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Respondents.

BRIEF AND APPENDIX AMICUS CURIAE IN SUPPORT OF PETITIONERS, SUBMITTED BY AMICI CURIAE, METROPOLITAN SCHOOL DISTRICTS OF LAWRENCE, WARREN AND WAYNE TOWNSHIPS, MARION COUNTY, INDIANA

This brief is filed pursuant to Rule 42 of the United States Supreme Court. A motion for leave to file a brief amicus curiae has been timely filed pursuant to Rule 42(3), and each of the amici curiae is a political subdivision for educational purposes of the State of Indiana.

INTEREST OF AMICI CURIAE

Amici Curiae are parties defendant to consolidated appeals now pending in the United States Court of Appeals for the Seventh Circuit, *United States of America and Buckley* v. *Board of School Commissioners of the City of Indianapolis*, (Cause Nos. 73-1968 through 73-1984). These appeals are taken from an order of the United States District Court for the Southern District of Indiana, ordering relief against school districts (including Amici Curiae) which are contiguous and non-contiguous to the Indianapolis school district, to remedy *de jure* segregation previously found to exist solely within the Indianapolis school district.

The principal issue now on appeal in the Indianapolis case is substantially similar to a principal issue in the cases now before this Court: Do state authorities have an obligation to Negro and other minority ethnic group children to order a reorganization of school governments and school management in a metropolitan area to effect a maximum and stable racial mix, where by reason of demographic trends common to the entire United States, minority race children are now or may become a majority in a central city district but are a minority in a total metropolitan area.

SUMMARY OF THE ARGUMENT

Appellees now ask this Court for an expansion in kind and degree of the obligations owed by state authorities under the Fourteenth Amendment to Negro children and to other ethnic

groups, where they now are or may become a majority of the population or enrollment in a central city school district, but a minority in a total metropolitan area. Appellees assert that the states have a Fourteenth Amendment obligation to reorganize local school governments and school management to effect a maximum racial mix.

The decisions of this Court to date have dealt principally with single school systems—do they retain vestiges of dualism, have they maintained a dual school system in the absence of statute, how shall they be desegregated? Even when all school systems become unitary under these decisions, however, mixing of blacks and whites to the degree demanded by Appellees cannot be attained, given the structure of existing municipal corporations.

Population growth, migration patterns and residential segregation have resulted in the central city of many urban areas predominantly or heavily black, surrounded by urban areas in the suburbs predominantly white. Where once America's population was predominantly rural it is now predominantly urban. According to the 1970 U. S. Census figures, urban areas throughout the country, including both central city and suburban areas, contain 65% of the total, 64% of the white, and 70.7% of the Negro population. Further, population has had a natural increase from 131 million in 1940 to 203 million in 1970. With limited availability of existing lands in central cities, population has expanded substantially in the suburbs, where there are now more people than in central cities. Thirty-six percent of the total population of the United States (72.8 million people) live in suburbs, while 29% of the total population (58.6 million people) live in central cities. Negroes, however, have migrated primarily to central cities where they constitute 21% of the population and where 58% of all the country's Negroes live. In the suburbs, by contrast, they continue to migrate and increase but constitute only 5% of the total suburban population. These concentrations are the product

of trends in migration and natural increase in population. The trends vary from decade to decade, from region to region and from city to city, influenced by changes in the birthrate, changes in job opportunities, general economic conditions and availability and condition of housing. The central cities experiencing the greatest in-migration and having the highest concentration of blacks are generally the Nation's largest, such as New York, Chicago, Los Angeles, San Francisco-Oakland and Detroit. The continuing concentration has occurred, however, to a greater or lesser degree in all others. These migrations constitute some of the largest migrations in world history.

Further, substantial research shows that for all regions of the country, all types of cities, large or small, central city or suburban, substantial residential separation exists between Negroes and whites—a phenomenon that occurs regardless of the character of laws and policies, and regardless of the extent of other forms of separation or discrimination.

Since desegregation decisions applying to single school systems neither touch nor counteract these trends, Appellees and judges in the frustration of trying to attain a substantial and stable integration of blacks and whites in school urge this Court to adopt an expanded and deceptively simple version of the states' Fourteenth Amendment obligation owed Negro children. If there are insufficient whites within a single system so that the system is identifiably black in comparison with its neighbors, the system must be expanded, or expanded and then reorganized in smaller areas, so that each resulting school district in a metropolitan area has no greater percentage Negro than any other. After this first step the expanded or reorganized districts will then be desegregated within the command and guidelines of *Brown*, *Green*, *Swann* and *Keyes*.[1]

1. *Brown* v. *Board of Education*, 347 U. S. 483 (1954) (Brown I); *Brown* v. *Board of Education*, 349 U. S. 301 (1955) (Brown II); *Green* v. *County School Board*, 391 U. S. 430 (1968); *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U. S. 1 (1971); *Keyes* v. *School District No. 1, Denver, Colo.*, ... U. S. ...., 41 U. S. L. W. 5002 (1973).

The suggested doctrine is, however, highly complex and involves the Court in fundamental questions of local and state educational and governmental policy—decisions which this Court has never considered appropriate for judicial action. The impracticability and undesirability of implicating the judiciary in balancing integrative necessities against the educational necessities of alternate local educational organization—the types, size, organization and powers of governmental entities which the states create to carry on education—can best be demonstrated by the vastness of the area and the scope and detail of the problems involved.

As to the size of the problem, 4,896 of the country's 16,859 school systems are in metropolitan areas. They enroll 32 million of the Nation's 48 million school children.

Further, each reorganization involves detailed problems influencing the kind of education that can or will be delivered, problems with highly divergent solutions. The following are representative: the size of the area to be desegregated in terms of numbers and proportions of Negro and white students; the size and proportion of Negro and white pupils in each unit; whether the area will be administered as a unit or broken down into smaller units; whether any unit will have sub-districts and the kinds and amount of authority to be given to each sub-district over such matters as curriculum, budget, personnel, union negotiations; how many members will be on the governing bodies of school boards or sub-boards; how the board members are to be selected—by election or appointment; if by appointment by whom the appointment is to be made; what relationship, if any, is to be retained between local school and civil government; how much tax base be assigned to each proposed unit of government; what shall be done with existing union contracts; will such contracts be negotiated in the future on a local, metropolitan or statewide basis; where, will, or may, teachers be transferred or assigned in the area; will curriculum or other educational standards or tax practices be uniform throughout the area; if so, by

whom will they be set. Extreme size itself is currently one of the most criticized aspects of school administration.

Finally, the duty to reorganize school districts would apparently be an on-going duty since its necessity is now urged on the basis of the identifiably black nature of central city school student bodies and the constitutional authority of the states to reorganize local units of government. Surely racial patterns are not now fixed for all time but will continue to change.

Neither the prior pronouncements of this Court relating to constitutionally required equality of treatment nor the internal logic of these pronouncements, suggest or require that the separate school systems be unidentifiable by the race of their students. The pronouncement of such a doctrine would constitute a greater change in the body politic than the change from "separate but equal" to "separate is inherently unequal" and "freedom of choice" following *Brown I* and *Brown II*, or from the latter to the "affirmative duty" of *Green*, *Swann* and *Keyes*. Amici urge that thus redefining a duty to involve the Federal Courts in weighing a necessity of integration against subjective determinations of educational management, throughout the country, with unpredictable and possibly counter-productive results, is unwarranted, and that the decision of the Sixth Circuit Court of Appeals should be reversed.

ARGUMENT.

A. Population and Population Change.

The theory of Appellees' case has implications extending far beyond the Detroit area with its several million people. It is based on changes in the concentrations and racial makeup of population and must be evaluated in the light of nationwide population trends. For census purposes, the country has been broken down into metropolitan areas inside central cities, metropolitan areas outside central cities generally called suburbs, and non-metropolitan areas.

The most significant facts about America's population are its continued growth, that it is highly and increasingly urban, and that its increased growth is predominantly in the suburbs. As of the 1970 census, the distribution of population between the major types of population areas was as follows:[2]

Area	Number (in millions)	Percent
Metropolitan Areas:		
Inside Central Cities	58,635	29.0
Suburbs	72,883	36.0
Non-metropolitan Areas	71,015	35.1
Total	202,534	100.0

This represented an increase of 28 million persons in the ten-year period beginning in 1960. Of this increase, 20 million were in metropolitan areas; and only 4 million in non-metropolitan areas. Of the 20 million ten-year increase in the metropolitan areas, 16.8 million were in suburban areas. Even

2. Bureau of the Census, Social and Economic Characteristics of the Population in Metropolitan and Non-Metropolitan Areas: 1970 and 1960, Rpt. P23 No. 37 (1971) (herein Pop. Rpt. 23 No. 37), Table A.

though extensive, these changes represent a slowing of the rate of increase for both central city and suburban population increase, which were twice as high in the preceding 10 years beginning in 1950.[3]

These trends are different for whites and blacks. Whites in the ten-year period between 1960 and 1970 decreased in number and percent in central cities, increased slightly in non-metropolitan areas, and increased substantially in suburban areas. Blacks, on the other hand, decreased in non-metropolitan areas, increased substantially in suburban areas, but increased in an even greater amount both in numbers and percent in central cities,[4] as shown by the following chart:[5]

Race and Residence	1970 Number*	1970 Percent Distribution	1960 Number*	1960 Percent Distribution	Change 1960-1970 Number*	Change 1960-1970 Percent
WHITE						
Metropolitan:						
Inside Central Cities	45,088	25.4	47,638	30.0	—2,550	—5.4
Suburban	68,539	38.6	51,793	32.6	16,746	32.3
Non-metropolitan	63,802	36.0	59,267	37.3	4,535	7.7
Total—United States	177,429	100.0	158,698	100.0	18,731	11.8
NEGRO						
Metropolitan:						
Inside Central Cities	12,587	55.2	9,480	51.5	3,107	32.8
Suburban	3,536	15.5	2,430	13.2	1,106	45.5
Non-metropolitan	6,685	29.3	6,481	35.2	204	3.1
Total—United States	22,807	100.0	18,391	100.0	4,416	24.0

* In Millions

Within metropolitan areas of every region, including the south, whites are found in the largest numbers in the suburbs while blacks are concentrated in central cities; and in each

3. Bureau of the Census, General Demographic Trends for Metropolitan Areas, 1960 to 1970, Rpt. PHC(2)-1, page 3 (1971) (herein Demo. Rpt. PHC(2)-1).

4. Id. at pp. 4-6.

5. Pop. Rpt. 23 No. 37, *supra* n. 2, Table A.

region of the country, blacks now comprise a higher percentage of the central city population than they did a decade ago.[6]

A significant factor in attempting a nationwide policy on restructuring local government, if it be done, is some understanding of the underlying causes of population change. One of these is the birthrate. For whites, the birthrate has fallen in the last decade and continues to fall moderately. For Negroes the birthrate has fallen later but since 1967 more precipitately, but is still above the level of white births.[7] This has been reflected in falling elementary school enrollments which in future years will mean reductions in both elementary and upper grade enrollments.[8]

An additional factor is the relative ages of white and black women of childbearing age. For the country as a whole a greater percentage of the Negro population than of the white is of childbearing age. This, however, varies from region to region. The north central region has a relatively lower white age group than the northeast region, while the white population of the south and west are more youthful than either.[9]

Further, aside from the factors of natural increase, population distribution depends on the factors influencing in-migration to one area and out-migration from another. Migration depends among other things on the relative lack of employment opportunities in the place people live compared with the greater

6. Id. at p. 2; Demo. Rpt. PHC(2)-1 at pp. 4-5; Bureau of the Census, The Social and Economic Status of the Black Population in the United States, 1972, Rpt. P-23 No. 26, p. 1 (1973) (herein Bl. Pop. Rpt. P-23, No. 26). A chart further evidence this fact assembled from data in Statistical Abstract of the United States—1972 is set out in the Appendix to this brief (herein the Br. App.) at p. A11.

7. Bl. Pop. Rpt. P-23 No. 26, *supra* n. 6, Table 59 reproduced in Br. App. p. A12; Bureau of the Census, Birth Expectations of American Wives June 1973, Rpt. P-20, No. 254, Table 1, reproduced in part in Br. App. at p. A13.

8. Bl. Pop. Rpt., *supra* n. 6, Table 46, reproduced in Br. App. at p. A14.

9. Demo. Rpt. PHC(2)-1, *supra* n. 3, pp. 7, 9, 10, 12.

opportunities in the areas into which they move, and the availability of housing in other areas, either public or private. The change for employment reasons is illustrated by the northward movement of blacks from cotton producing jobs during World War I due to the destruction of the cotton crop by the boll weevil and the improvement in farm machinery, coupled with the increase in wartime employment opportunities in the north. Further illustrative, is the slowing of this movement during the depression of the thirties, and its increase again during and after World War II.[10] The availability of housing, in turn, is affected by major economic factors. Negroes did not move from the inner part of the central city during World War II because new housing was non-existent. The flow of Negroes to the outer areas of central cities and to the suburbs, and of the whites to the suburbs, was due in large part to the destruction of central city housing by public works or private development, its deterioration in older areas, and to the vast expansion of housing in the suburbs commencing in the fifties. The continued migration of both whites and blacks to particular metropolitan areas in the sixties and beyond is a product of continuing better job opportunities.[11]

In recent years, migration has not been characterized entirely by migrations from rural to metropolitan, but also by migrations from one metropolitan area to another, migrations which "flow in complex and interlocking channels."[12]

The only certainties in the area of demographics are the variations within a general theme, the multiple factors which govern change, and the unpredictability of percentages, ratios and numbers of population and school enrollment within any particular area.

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10. Drucker, The Age of Discontinuity (Harper & Row 1968), p. 227. "No city in history has ever been able to absorb an influx of such magnitude as the American cities have had to absorb since the end of World War II."

11. Taeuber, Negroes in Cities (Aldine Publishing Company 1965) (herein Taeuber) pp. 12-3, 125, 152-3, 162-165.

12. Taeuber, at pp. 127-8.

The variations are at least as significant as the overall pattern For example, in the decade of the sixties: in the northeast, population growth was due to natural increase, the substantial white out-migration being balanced in part by in-migration of other races, there being an increase in white non-metropolitan population;[13] in the north central region, there was heavier out-migration of whites from non-metropolitan areas, with roughly balancing out-migration of whites from, and Negroes into, metropolitan areas;[14] in the south there was, by contrast, heavy in-migration of whites to metropolitan areas, lighter in-migration of other races, moderate out-migration of whites and heavy out-migration of Negroes from non-metropolitan areas;[15] in the west, net in-migration to metropolitan areas was highest in percent in the Nation, consisting of 2.4 million whites and 650,000 of other races, with California the greatest attractor of migrants in the Nation, gaining 2,000,000 by in-migration.[16]

Cities reveal the same variation. For example, blacks expanded in all suburban areas but without, however, an overall percentage increase. Virtually all the increase resulted from in-migration in the suburbs and not from any natural increase. The suburban areas of Washington, D. C. and St. Louis had large Negro percentage gains; Detroit and Pittsburgh virtually none, and Baltimore suburbs experienced a Negro percentage loss.[17]

Central cities which showed the greatest percentage loss in white population were among the 12 largest in the country, but even here there was variation. New York, Chicago and Detroit alone accounted for more than half of the loss in numbers. Washington, D. C., St. Louis, Detroit and Cleveland had the highest rates of loss, with Chicago and New York showing rel-

13. Demo. Rpt. PHC(2)-1, *supra* n. 3, p. 7.
14. Id at p. 9.
15. Id. at p. 10.
16. Id. at p. 11.
17. Id. at p. 14.

atively moderate rates of loss, and Los Angeles experiencing a white gain in population. Cities between 2 million and 500,000 had a small aggregate gain in numbers of whites, but about one-half of these cities lost white population while the other half gained, with great variations between them.[18] The same variation can be applied to Negro gains in numbers as well as white losses. The figures can be further broken down to show whether the gains or losses were occasioned by net in-migration, net out-migration, or natural population increase.

Finally, one researcher has found that residential separation between blacks and whites is a condition existing in all cities in all regions of the country regardless of the character of local laws and policies, and regardless of the extent of other forms of segregation and discrimination.[19]

There are no reliable studies suggesting that central city school segregation was a causal factor in these vast demographic changes or that the present trends are consistent throughout the country or can be accurate predictors of what will occur in the future in any particular metropolitan area or city.

If demographic changes in school enrollments make a case for judically supervised school reorganization, the change will be national in scope and can reasonably be expected to affect many of the 4,896 school corporations in metropolitan areas

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18. Id. at p. 13.

19. Taeuber, *supra* n. 10, pp. 35-6.

"No further analysis is necessary to reach some broad generalizations concerning racial segregation: In the urban United States, there is a very high degree of segregation of the residences of whites and Negroes. This is true for cities in all regions of the country and for all types of cities—large and small, industrial and commercial, metropolitan and suburban. It is true whether there are hundreds of thousands of Negro residents, or only a few thousand. Residential segregation prevails regardless of the relative economic status of the white and Negro residents. It occurs regardless of the character of local laws and policies, and regardless of the extent of other forms of segregation or discrimination."

which educate 32 million of the Nation's 48 million school children.[20]

B. Scope of the Remedy.

Appelles' justification for a judical order to the State of Michigan to reorganize its school corporations is based on the segregation in the Detroit schools, its predominant (68.6%) Negro enrollment coupled with the predominantly white enrollment of surrounding school corporations,[21] the technical nature of local school officials as "state officials" charged with local responsibilities, and the constitutional right of the State to create, dissolve, regulate and grant powers to, local school corporations.

This chain of logic disregards the fact that while Michigan, in common with other states, has plenary power over the entities by which education is carried out, it has chosen to carry out education through local independent municipal corporations primarily responsible to a local constituency.[22]

The question is not whether the State has the right to control these matters, but whether the Fourteenth Amendment requires a judicial supervision over the character of the entities by which educational matters be carried out for the purpose of achieving a greater mix of Negroes and whites and a balancing of integrative necessities against the multitudinous educational considerations involved in a reorganization of school corporations. An

20. Bureau of the Census, Public School Systems in 1971-72 (herein School Systems 1971-2), Table 2.

21. *Bradley* v. *Milliken* (6th Cir., Cause Nos. 72-1809-72-1814) Slip Opinion, June 12, 1973, pp. 53, 63-4.

22. Parenthetically most states also have plenary authority over all local governmental subdivisions. In Indiana this is true for counties (*Co. Dept. of Pub. Welfare* v. *Potthoff*, 220 Ind. 574, 581, 44 N. E. 2d 494 (1942) and for civil cities and towns (*Woerner* v. *City of Indpls.*, 242 Ind. 253, 266, 177 N. E. 2d 34 (1961)), which may be abolished, consolidated or combined or eliminated by statute, and which have only those powers delegated by statute (*Southern Ry. Co.* v. *Harpe*, 223 Ind. 124, 132, 58 N. E. 2d 346 (1944)).

answer requires some understanding of the broad range of educational matters now determined locally.

The framework for the performance of educational services throughout the country is described by this Court in *San Antonio Independent School District* v. *Rodriquez* in substantial detail, but also in general terms as follows:[23]

> "Although policy-decision making and supervision in certain areas are reserved to the State, the day-to-day authority over the 'management and control' of all public elementary schools is squarely placed on the local school boards."

This is typically and particularly true throughout the country in broad areas of educational policy, including among other things, curriculum and school programs, hiring, firing and promotion of personnel, fixing the terms of employment, pupil assignments, school construction and budget. With respect to curriculum, while a multiple choice of textbooks and minimum graduation requirements are generally certified by the state, local school districts have tremendous latitude. They determine the subjects taught, the methods by which they are taught, the amount of time spent per day in different study areas, pupil assignment, grade structure of particular schools, the use of supplemental material, summer school programs, the type and extent of extracurricular activities, whether to provide schools for specialized instruction, whether to adopt such innovations as undifferentiated grade schools, "hands on" vocational programs, and learning disability programs, and where, how and whether, to build facilities for those activities.

With respect to personnel, while the states enforce minimum certification requirements, the great bulk of personnel decisions —who is hired, where they are to be assigned, internal administration, orgainization of departments, the conditions of employment, the right of promotion and transfer—are controlled locally, particularly in the larger districts, the latter matters are governed by highly sophisticated union contracts negotiated be-

23. .... U. S. ....., 41 U. S. L. W. 4422, n. 108.

tween local districts and unions, where the scope of negotiations becomes a confrontation between board and union over general school policy.[24] With respect to pupil policies, typically, a local school district will control where and to what schools pupils are assigned, whether they will be transferred, the prerequisites to participation in given programs and the control and discipline of students. Budget, another local function, determines how much of the available funds a district will expend in what areas. As has been frequently noted, control of fiscal policy is control of educational policy.[25]

The extent to which Appellees would inject the judiciary into this local process is evidenced by the District Courts by the "Ruling on Desegregation Area and Order for Development of a Plan of Desegregation" in this case.[26] While this order was vacated by the Sixth Circuit order pending state legislative response, it was not reversed; and the scope of this order indicates the necessary scope of the response. It is to be measured by the interplay of only two factors, "maximum feasible desegregation" and the "elimination of racially identifiable schools".[27] With respect to the area of desegregation to

24. See, Wall Street Journal, September 7, 1972, p. 1, col. 1 "Who's in Charge: Public-Employe Unions Press for Policy Role; States and Cities Balk":

> "The UFT's president, Albert Shanker, freely concedes that some of the demands had policy implications. But, he insists, 'what we're primarily interested in is improving the teachers' working conditions.' It just so happens, he adds, that 'there is hardly anything which cannot simultaneously be viewed as a working condition and a matter of educational policy.'
>
> The issue of class size is one of Mr. Shanker's favorite examples. 'You can approach it from the point of view of what's best for the children or as a question of allocating resources,' he says. 'But, obviously, handling a lot of kids is more difficult than handling just a few. And in that way, it's most certainly a working condition.' "

25. American Association of School Administrators, School District Reorganization (1958), pp. 70-71.

26. 345 F. Supp. 914 (E. D. Mich. 1972).

27. Id. at p. 925, n. 9.

which the order applied, the Court had before it the following proposals:[28]

Proposal	Number of Districts	Number of Pupils	% Black
Total Metropolitan Area	86	1,000,000	20%
Detroit Board	69	850,000	25%
CCBE	62	770,000	25.4%
Plaintiffs	54	780,000	25.3%
State	36	555,000	36%

The Court chose a modified form of Plaintiff's proposal.

With respect to the organization of local governmental entities necessary to effect the order, the following parts are significant:[29]

> J. Pending further orders of the court, existing school district and regional boundaries and school governance arrangements will be maintained and continued, except to the extent necessary to effect pupil and faculty desegregation as set forth herein; provided, however, that existing administrative, financial, contractual, property and governance arrangements shall be examined, and recommendations for their temporary and permanent retention or modification shall be made, in light of the need to operate an effectively desegregated system of schools (345 F. Supp. at p. 919.)
>
> * * * * *
>
> 70. The plans submitted by the State Board, the Detroit Board, and the intervening defendants Magdowski, et al., discuss generally possible governance, finance, and administrative arrangements which may be appropriate for operation of an interim or final plan of desegregation. Without parsing in detail the interesting, and sometimes sensible, concepts introduced by each plan, it is sufficient to note that each contemplates overlaying some broad educa-

28. Id.

29. The District Court Order in the Indianapolis case was comparable in scope, although ameliorated in detail. See Br. App., pages A1 through A10.

tional authority over the area, creating or using some regional arrangement (with continued use or eventual redrawing of existing districts), and considerable input at the individual school level. The court has made no decision in this regard and will consider the matter at a subsequent hearing. (345 F. Supp. at p. 933.)

C. Reorganization: The Substantive Factors.

A local school district's organization is a major determinate of whether it can deliver good education. The most crucial aspect is its size: too small, it lacks the pupils and resources for a broad range of offerings and services; too large, it becomes unresponsive to its constituents, inflexible, inefficient and unable to innovate on a broad scale. Since the early 1940's, extremely small size has been increasingly corrected by consolidation.[30] No good remedy has been found for bigness (as will be shown below); but there has been no tendency to aggregate schools further into extremely large units. Distribution of schools in the United States by enrollment as of 1969 was as follows:[31]

	Number	Percent of Total
School Districts with pupil Enrollments of 25,000 & over	180	1.001%
10,000 to 24,000	538	2.992
5,000 to 9,999	1,096	6.095
2,500 to 4,999	2,026	11.268
300 to 2,499	7,911	43.998
under 300	6,229	34.644

The classic examination of large school system failure is the study conducted by the Mayor's Advisory Panel on Decentralization of New York Schools, better known as the "Bundy Report". This report chronicled and studied the continuing decline in

30. School Systems 1971-72, *supra* n. 20, pp. 1-2.
31. H. E. W., Dept. of Educational Statistics 1971.

student performance and increasing cost of the New York City system. It pinpointed the major cause as too large a size.[32]

> No school system is free of shortcomings, but in New York the malaise of parents is heightened by their increasing inability to obtain redress or response to their concerns. Teachers and administrators, too, are caught in a system that has grown so complex and stiff as to overwhelm its human and social purpose.
>
> Whether the reaction is quiet frustration or vocal protest, the result throughout the city is disillusionment with an institution that should be offering hope and promise. No parent, no teacher, no school administrator, no citizen, no business or industry should rest easy while this erosion continues.
>
> The causes of the decline are as diverse and complex as the school system itself and the city that created it. But one critical fact is that the bulk and complexity of the system have gravely weakened the ability to act of all concerned—teachers, parents, supervisors, the Board of Education, and local school boards.

The system had become one in which many interest groups could assert a negative and self-serving power but in which none could effectively innovate.[33]

> Neglect of this principle (i.e., the instrumental value of power as opposed to its value as a final goal) in our judgment, is responsible for much of what is wrong in the New York City Schools today. We find that the school system is heavily encumbered with constraints and limitations which are the result of efforts by one group to assert a negative and self-serving power against someone else. Historically these efforts have had ample justification, each

32. Mayors Advisory Panel on Decentralization of the New York Schools, Reconnection for Learning—A Community School System for New York City, McGeorge Bundy, Chairman (Frederick A. Praeger, Publishers, 1969) (herein the "Bundy Report) pp. 5-6.

33. Reprinted in Hickey, Optimum School District Size (Eric Clearinghouse on Educational Administration, University of Oregon 1969), p. 25.

> in its time. To fend off the spoils system, to protect teachers from autocratic superiors, to ensure professional standards, or for dozens of other reasons, interest groups have naturally fought for protective rules. But as they operate today these constraints bid fair to strangle the system in its own checks and balances, so that New Yorkers will find themselves, in the next decade as in the last, paying more and more for less and less effective public education (p. 1).

Size, itself, has been recognized in many studies as responsible for many of the failures of large city schools, such studies making it increasingly clear that good educational decisions are made at a level that is close to the individual child.[34]

> At the same time, it is peculiar that, just as the disadvantages of large school districts are being recognized, the metropolitan approach would increase the size of the overall administrative unit. The cumbersome and highly bureaucratized behavior of the large-city school districts is responsible for many of the failures of the city schools. Increasingly, it appears that good educational decisions are made at a level that is close to the individual child (see, for example, Fantini [1970], pp. 40-75). Despite this recognition, the movement to metropolitan school districts would centralize further the level of decision making and buttress that centralization with an even greater opportunity for bureaucratic mindlessness.

There have been many studies on the optimum size of a school district. Generally recommended optimum sizes vary with the purpose for which the size is picked. Studies do not, however, suggest a school district size even approaching Detroit's size.[35]

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34. Henry M. Levin, Financing Schools in a Metropolitan Context in Metropolitan School Organization: Basic Problems and Patterns (McCutcheon Publishing Corporation 1973), p. 39.

35. Detroit is the sixth largest school district in the United States with an enrollment of 266,193 in the 1971-1972 school year. H. E. W. Education Directory 1972-73, p. 255. For a table summarizing optimum for varying purposes, see Br. App. A15.

The remedy proposed by the Bundy Report was based on the following premise:[36]

> The concept of local control of education is at the heart of the American public school system. Laymen determine the goals of public education and the policies calculated to achieve them.

The report recommended decentralizing the system into component units with substantial and real control over educational policy. It proposed local community school districts of from 12 to 40 thousand pupils with some policy established on a city-wide basis but with each district primarily governed by community school boards. These would establish procedures and channels for the closest possible consultation with parents, community residents and teachers, preserving all existing tenure rights of teachers but thereafter awarding tenure selection to the community district.[37]

This type of decentralization is of a different character from decentralization of administrative functions where all ultimate control is retained by central authorities. The results of the latter have been characterized as follows:[38]

> When authority is decentralized, the person granted local power remains responsible to the same group of officials that delegated the authority. . . . Because local officials are responsible to higher authority, rather than to those they serve, their clients have no direct means of influencing policy or action; even more important, perhaps, the official loses the freedom of action which true responsibility would confer on him. . . . What now exists . . . in most large cities is authority without responsibility.

The decentralization recommended by the Bundy Report has been a failure since it did not reckon with the unwillingness

36. Bundy Report, p. 6.

37. Id. at pp. XIII and XIV.

38. John W. Polley, "Decentralization Within Urban School Systems," in Education in Urban Society (Dodd, Mead, and Co., 1962), pp. 122-123, cited in the Bundy Report, p. 8.

of those who had power within the system—teachers, administrators and central board—to relinquish it. The range of failure, from the compromise enabling legislation through its subsequent implementation, has been well chronicled.[39] Curriculum reform could not be effected because of central board control of policies and since central board budgetary restraints prevented local boards from hiring curriculum specialists.[40] Budget submissions by local boards were for informational purposes only, and local funds were allocated by fairly rigid formulas.[41] With respect to personnel, the relatively large grants of power were frustrated by the power retained in the Board of Examiners to appoint, assign and discharge teachers. Teachers retained the right to transfer from one district in the system to another and were unresponsive to the needs of the constituency they served.[42] Finally, the process of collective bargaining remained with the central board. Local boards had three representatives who could meet with the negotiating committee but who were not part of the "management team".[43] The quantitative results in student performance continued downward after decentralization, as it had before.[44]

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39. Rebell, New York's Decentralization Law: Two and a Half Years Later, 2 Journal of Law and Education (1973) (herein Rebell); Zimvet, Decentralization and School Effectiveness—A Case Study of the 1969 Decentralization Law in New York City (Teachers College Press 1973) (herein Zimvet).

40. Rebell, pp. 7-12; Zimvet, p. 5.

41. Rebell, pp. 13-14.

42. Zimvet, pp. 5-6, 127-128.

> "Much of the conflict between the professional staff and the community can be traced to these two sets of criteria. In terms of what a teacher should be, the professional staff and the unions representing them insist that he must pass certain tests, possess particular credentials, and perform his assigned duties in accordance with accepted procedures and practices. Community groups, on the other hand, especially those concerned with the appointment of more black and Puerto Rican teachers and supervisors, insist that traditional credentials are not as important as is the ability of the teacher or supervisor to relate to children, to parents, and to the community."

43. Rebell, pp. 21-30.

44. Zimvet, p. 147.

The "metropolitan solution" has been termed an educational myth attributable to the desire for simple answers to complex questions and one which fails to make the distinction between educational problems which exist in a metropolitan area as contrasted with problems which can only be solved by a metropolitan solution.[45]

Even if a metropolitan solution is necessary for purposes of achieving maximum integration, however, the only structural remedy to the educational problem of size—decentralization—will by definition conflict with integration in many situations. The concentration of Negroes and whites in different areas is the heart of the problem, and this occurs by the decentralization of the present local educational governments.

In any case, and even if experts are found who revere large school size, this is the caulderon of educational policy into which Appellees would thrust the judiciary in decreeing maximum integration by interdistrict remedy.

In addition to the problem of establishing a new framework of educational government, Appellees' position raises the equally difficult problem of how each reorganized unit shall be governed. With hundreds of thousands of people in very large areas, elections have proved unsatisfactory. They are expensive, often lack effective supporting political organization, and are subject to manipulation by narrowly based interest groups. If the governing body is to be picked by appointment, the appointing authority must be chosen. What civil political officer or officers will be chosen, answerable to whom. Appointment removes the board member one further step from the people he serves—a crucial problem in a large district whose boundaries are not, and in a reorganization will not be, coterminous with any other political entity.

Other problems, while less fundamental, will prove equally troublesome. What will be done with the collective bargaining contract of the largest unit? Will this contract be imposed

45. Metro. Schl. Org., *supra* n. 35, pp. 35, 41-2.

over the entire area on the various units and sub-units? May teachers be transferred from one area to another? Do the residents of the area through their boards have power to hire, fire, transfer and promote? Are the teachers responsive to the constituents of that district—a factor more important than formal educational qualifications? Who controls finance?

Necessarily the judiciary, under Appellees' theory, must in the last analysis determine a myriad of educational problems in the reorganized districts which affect the day-to-day operation of the system. Further, since the reorganization process even without desegregation problems lasts over several school years, and since desegregation cases historically are marked by long court sojourns with annual petitions for additional relief as conditions or doctrine change, judicial intervention will be both pervasive and long.[46] Additionally, the implication of the Sixth Circuit Court opinion would logically require further judicial reorganization occurring with demographic change. Its decision is buttressed on the racial identifiability of Detroit "as a black school system" and a Detroit school district predominantly black surrounded by a ring of suburbs and school systems predominantly white and historical boundary lines which are considered artificial and must be disregarded.[47] As applied to the country as a whole, this condition will occur in many other areas, and will reoccur in some areas once an area is desegregated given the varying pattern of demographic change.

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46. For a poignant history of one desegregation suit, see *Calhoun* v. *Cook*, 332 F. Supp. 804, 805-6 (N. D. Ga. 1971), *aff'd and rev'd. in part;* 451 F. 2d 583 (5th Cir. 1972). In view of the subjective educational and governmental judgments required under the doctrine here urged by Appellees consistency of lower court decision would be even less expected than it is in practice under the present relatively clear single district doctrines. Compare, *Kelley* v. *Metro Bd. of Ed. of Nashville, Tenn.*, 463 F. 2d 732, 741 (6th Cir. 1972), cert. den. 409 U. S. 1001, with *Goss* v. *Bd. of Ed. of Knoxville*, 482 F. 2d 1044, 1046-7 (6th Cir. 1973).

47. See, n. 21 *supra.*

D. Affirmance Is Inconsistent with Prior Decision of This Court.

The internal logic of prior decisions of this Court does not require or permit the redefinition of the constitutional duty urged by the Appellees or reached by the Sixth Circuit. There is no showing that the acts of school authorities in Detroit created the concentration of black population and black students in Detroit. Rather, this concentration was a major demographic change occurring to a greater or lesser extent throughout the country as a whole. This Court has previously held that the constitution does not require a particular racial balance in a given school or stability in racial balance in a school or school district.[48] Further, the Detroit area suburban schools are not part of the Detroit school system in which segregation was found by the District Court, but are separate identifiable and unrelated school systems.[49] This is not a case where the Detroit area districts are being created with the effect of hindering a desegregation order.[50] Finally, Appellees have attacked, as has been shown above, the basic governmental framework and methods of educational management which Michigan has chosen for furnishing education to its children. This framework and these methods are matters in which courts lack expertise and familiarity, where educators cannot agree on the solutions to the many problems and where it would be difficult to imagine a constitutional requirement having a greater impact on the federal system.[51]

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48. *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U. S. 1, 24, 31-2; *Spencer* v. *Kugler*, 326 F. Supp. 1235 (D. N. J. 1971), *aff'd.* 404 U. S. 1027 (1972).

49. *Keyes* v. *School District No. 1, Denver, Colo.*, ... U. S. ...., 41 U. S. L. W. 5002, 5006, 5009 (1973).

50. *Wright* v. *Council of Emporia*, 407 U. S. 451 (1972). Neither is this a case such as *Haney* v. *Co. Bd. of Ed. of Seiver County*, 410 F. 2d 920 (8th Cir. 1969), where small all negro districts were set up as an integral part of a dual system, or *Lee* v. *Macon Co. Bd. of Ed.*, 448 F. 2d 746 (5th Cir. 1971), where the State had acted to prevent desegregation within a single district.

51. *San Antonio Independent Schl. Dist.* v. *Rodriguez*, ... U. S. ...., 41 U. S. L. W. 4407, 4419-20 (1973).

CONCLUSION

As a matter of educational policy, it may be sound in specific instances for states to reorganize their school districts or to cause the transfer of students across district lines for the purpose of creating greater mixing of the races in settings which promise to further the education of all children. An absolute constitutional requirement, however, that states must reorganize any district in a metropolitan area where its student body is more heavily black than its neighbors to counteract existing and future demographic trends would thrust the federal judiciary into balancing a necessity of integration against and ultimately determining the most sensitive areas of school management. Such a requirement is unwarranted. Amici urge that the decision of the Sixth Circuit Court of Appeals in this case be reversed.

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